



**EDISON ELECTRIC
INSTITUTE**

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Executive Director, Environment

April 22, 2005

The Honorable Karen A. Harbert
Assistant Secretary for Policy
and International Affairs
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

E-mail: 1605bguidelines.comments@hq.doe.gov

Dear Assistant Secretary Harbert:

The Edison Electric Institute (EEI) appreciates the March 24, 2005, publication in the *Federal Register*, pursuant to section 1605(b) of the Energy Policy Act of 1992 (EPAct), 42 U.S.C. § 1338(b), of a new version of the proposed December 5, 2003, General Guidelines for the “Voluntary Reporting of Greenhouse Gases Program,” together with notice of the availability of the related draft Technical Guidelines, and of the opportunity for public comment on both sets of documents. We also appreciate that the Department of Energy (DOE) and the Department of Agriculture are providing an opportunity for EEI and others to present “stakeholder views” at public workshops scheduled for April 26 and 27 and May 5, 2005. 70 *Fed. Reg.* 15164 and 15169 (2005).

EEI writes to request a 30-day extension of the period afforded by the notice for submission of written comments by stakeholders and other members of the public beyond May 23, 2005.

EEI is the association of U.S. stakeholder owned electric companies, international affiliates and industry associations worldwide. Our U.S. members serve 90 percent of customers served by the investor-owned segment of the industry. They generate more than 70 percent of all of the electricity generated by electric utility sector in the U.S. and serve nearly 70 percent of all ultimate customers of electricity in the nation. EEI members have been the principal participants in voluntary greenhouses gas (GHG) emissions and reductions reporting since the current section 1605(b) guidelines were issued by DOE in 1994. Indeed, in 2003 the power sector reported 261 million metric tons of reduced, avoided or sequestered GHGs under section 1605(b), or nearly two-thirds of all reductions reported in the program.

EEI is one of seven power sector groups that, on December 13, 2004, signed the Climate VISION Memorandum of Understanding (MOU) with DOE, which established an industry-government partnership for reducing, voluntarily and collectively, the power sector's carbon intensity by an equivalent of 3-5 percent by 2012 as a "meaningful contribution" to the President's goal of reducing the GHG intensity of the U.S. by 18 percent by 2012. The MOU encourages power sector member companies "to use the 1605(b) program for reporting and registering GHG emissions intensity reductions achieved under company-specific plans" and the Climate VISION program. Thus, EEI and our member companies have a great interest in any revision of the section 1605(b) guideline "procedures" and the related reporting forms that the Energy Information Administration (EIA) must prepare based on that revision.

Stakeholders and other members of the public are only given 60 days, or until May 23, 2005, to prepare for the three days of workshops – all of which are scheduled after the expiration of more than half of the 60-day period – and to develop written comments on two voluminous sets of documents revising the existing EPAAct guidelines. The DOE workshop is to provide an “open discussion” by the “range of stakeholders and government representatives present” on “all elements of the draft Technical Guidelines” and on the “interim final General Guidelines.” Similarly, the joint DOE/Agriculture workshop is to provide “an overview of the draft Technical Guidelines for agriculture and forestry sources and sinks” and an opportunity “to ask questions about the proposed methods” and to “discuss specific issues.” 70 *Fed. Reg.* 15168-69. Provision is made in the notice for obtaining transcripts of both workshops, although it is unclear when those will be available. *Id.* at 15169. When the workshops end on May 5, there will remain only 18 calendar days (and 12 working days) in the public comment period, which, for the reasons explained below, is inadequate for a comprehensive and detailed set of comments.

When DOE proposed on December 5, 2003, draft General Guidelines, together with a workshop schedule, DOE also initially allowed only 60 days for comment but then extended the comment period until February 17, 2004. Now, after more than a year since public comments were submitted on that proposal, DOE has published “revised General Guidelines,” saying in the notice’s Introduction that the “main revisions” to the 2003 version “were relatively few. . . and were not significant enough to warrant reproposal as another notice of proposed rulemaking.” 70 *Fed. Reg.* 15170. However, the notice’s “Section by Section Discussion of the General Guidelines” (*id.* at 15177-81) clearly indicates that DOE has made more than a “few” revisions

to the original 2003 proposal. In fact, there have been major changes to many provisions in the General Guidelines since the December 2003 proposal, including additional and more detailed provisions. Several examples of the numerous changes include:

- § 302.2, Definitions, the 2003 version included 17 definitions, while the new version revises 10 of those, adds 12 new definitions and drops three others.
- § 300.4 on organizational boundaries, where DOE states that a “number of changes have been made” to the section. 70 *Fed. Reg.* 15178.
- § 300.6 on emission inventories, which the notice explains has been “modified.” *Id.* at 15179.
- § 300.8 on calculating emission reductions, which, according to the notice, has been “significantly expanded.” *Id.* at 15180.
- § 300.11 on independent verification, which the notice states has been “substantially revised and expanded.” *Id.*

As noted above, DOE made the draft Technical Guidelines available on the DOE website for review and comment. The interim final General Guidelines specify in section 300.1(c) that they provide “[f]urther guidance on the interpretation and application” of the General Guidelines, and section 300.13 states that they “have been approved for incorporation by reference” in the revised General Guidelines by the Director of the Federal Register. Thus, although the 285 pages of draft Technical Guidelines and Glossary will not to be included in the *Code of Federal Regulations*, they will form an integral part of the section 1605(b) “procedures” for the voluntary reporting of GHG “information” to DOE. Accordingly, they will be extremely important to our member companies contemplating whether to use section 1605(b) reporting under the Power PartnersSM MOU. Indeed, the Technical Guidelines are specifically referred to in many sections of the interim final General Guidelines. Examples include:

- § 300.5, “Submission for an entity statement.”
- § 300.6, “Emission inventories.”
- § 300.8, “Calculating emission reductions.”
- § 300.9, “Reporting and recordkeeping requirements.”

Moreover, under its Summary of the Technical Guidelines, the notice provides Issues for Comment and specifically invites in several places public input as part of the public’s written comments. 70 *Fed. Reg.* 15164-68. Important to the preparation of those comments will be the opportunity for EEI and others to discuss these issues and to ask relevant questions about the draft at both workshops and to have available the transcripts of both in preparing written comments. As DOE has noted, such “public review” of the draft Technical Guidelines “may suggest” changes not only in them, but also in the General Guidelines. Yet in light of the *Federal Register* notice, EEI, other stakeholders and the general public will have only 18 calendar days (or a scant 12 working days) to prepare and submit written comments to DOE. In our view, that is not in accord with the intent and spirit of the section 1605(b)(1) provision for public comment.

We recognize that DOE has stated in the notice that the “interim final rule” provisions “will be effective” on September 20, 2005, and that “incorporation by reference of the Draft Technical Guidelines” has been “approved” for the same date. 70 *Fed. Reg.* 15169. However, DOE also indicates in several instances that that date may be extended (*id.* at 15170, col. 3 and 15181, col. 1), and in its public Email of April 1, 2005, stated, “The revised guidelines will not likely take

effect until the 2006 calendar year.” Moreover, DOE has been considering the 2004 public comments for more than a year since first proposing the revised General Guidelines and announcing its intention to “propose Technical Guidelines” for public comment and, as we noted, has used that time to make major changes in many provisions in the General Guidelines and to develop the draft Technical Guidelines for public review. 68 *Fed. Reg.* 68205 (Dec. 5, 2003). For all of these reasons, **EEI requests an extension of the comment period of at least 30 days.** We emphasize that a lesser extension from 60 to 75 days, as in 2004, would not suffice, particularly because we are commenting this time on a new, voluminous set of Technical Guidelines, in addition to the General Guidelines, and the interrelationship of the General and Technical Guidelines.

Thank you for your consideration of our request, and **we urge DOE to extend the comment deadline prior to the May 5 workshop.** If you have any questions about our request, please contact me or William Fang, EEI’s Deputy General Counsel and Climate Issue Director, at (202) 508-5617 or bfang@eei.org.

Sincerely,

Quinlan J. Shea / by W.L. Fang
Quinlan J. Shea, III

QS:ffm

cc: David W. Conover
Principal Deputy Assistant Secretary,
Office of Policy and International Affairs, DOE

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